Infringement of Article 1 of Regulation (EEC) No 2241/87 and Article 2 of Regulation (EEC) No 2847/93: these provisions require the Member States to monitor fishing activity by vessels flying their flag. In that connection, they must carry out all necessary inspections. From the figures concerning the number of cases of overfishing, and the extent thereof, it is plainly apparent that the Belgian authorities failed to take the control measures necessary to prevent those cases of overfishing.

Infringement of Article 11(2) of Regulation (EEC) No 2241/87 and Article 21(2) of Regulation (EEC) No 2847/93: the Belgian authorities clearly acted negligently in regard to the management of the quotas by failing, in several cases, to impose at the appropriate time a closing date for fishing.

Infringement of Article 1(2) of Regulation (EEC) No 2241/87 and 31 of Regulation (EEC) No 2847/93: where fishing vessels landed fish after the closing date for fishing of the relevant fish stock or without a quota for that fish stock having been allocated to Belgium, the masters of those vessels acted in breach of Community law. The Belgian authorities were therefore obliged to institute penal or administrative proceedings against those masters or any other persons responsible.

The Belgian Government has provided no evidence that that has been done.

1. Declare that, by imposing, contrary to Directives 68/360 (1), 73/148 (2) and 90/365 (3), the obligations to obtain a residence visa for the issue of a residence permit to nationals of a non-Member State who are members of the family of a Community national who has exercised his right to freedom of movement, and, by not granting, contrary to Directive 64/221 (4), a residence permit as soon as possible and, at the latest, within the six months following the application for a permit, the Kingdom of Spain has failed to fulfil its obligations under the EC Treaty.

2. Order the Kingdom of Spain to pay the costs.

**Pleas in law and main arguments**

The formalities which may be required by a Member State of a Community national exercising his right to freedom of movement or of a member of his family are clearly circumscribed by the relevant Community legislation with the result that, in the Commission’s view, it is plainly contrary to the letter and spirit of Community law, as laid down in Directives 68/360, 73/148 and 90/360, for a Member State to require any other formality in connection with entry or residence.

As a consequence of that premiss, the Commission is of the view that the Spanish legislation and practice, in accordance with the matters established, conflict with those principles of Community law. Essentially, the residence visa required under Spanish legislation is an instrument enabling the national authorities to examine — prior to entry into Spanish territory — the reasons why a national of a non-Member State wishes to reside for more than three months on national territory.

The national of a non-Member State who is the member of the family of a Community national exercising the right to freedom of movement cannot be assimilated to the national of a non-Member State without that family tie. On the contrary, that national of a non-Member State is the beneficiary of derived rights under Community law and thus enjoys rights of entry into and residence in the territory of another Member State at the same time as the Community national.
That national of a non-Member State may not be required to show any independent reason for entering into and residing in the territory. His right, as a matter of Community law, is derived from the right enjoyed by the Community national in such a way that to impose on that person prior formalities concerning entry into national territory constitutes not only a restriction on his (derived) right but also a restriction on the principal right of the Community national.

The Commission at the same time emphasises that, in conformity with the general system of the Community rules on the issue of residence permits and, with particular regard to Article 5 of Directive 64/221, the Member State must adopt the decision concerning the residence permit as soon as possible and in any event not later than six months of the date of the application, it being understood that this maximum period of six months is to be taken into account only in cases where examination of the application is interrupted on grounds of public policy.


Action brought on 7 April 2003 by the Commission of the European Communities against the Kingdom of Spain

The applicant claims that the Court should:

1. Declare that, by including in the invitation to bid in various tender procedures organised by the Instituto Nacional de la Salud para la prestación de servicios de terapias respiratorias domiciliarias criteria for admission, assessment and selection which require bidders to have, at the time of submitting the bid, certain installations on Spanish territory, or within a radius of 1 000 kilometres thereof, and, prior to that, public information offices in specific locations, or that they should at the time be providing the same kind of service, the Kingdom of Spain has failed to fulfil its obligations under Articles 43 and 49 EC:

2. Order the Kingdom of Spain to pay the costs.

Plas in law and main arguments

The Commission takes the view that the invitations to bid relating to the tender procedures which are the subject of these proceedings are discriminatory inasmuch as they are not justified by any overriding reason relating to the public interest nor do they observe the principle of proportionality.

Appeal brought on 7 April 2003 by Jan Pflugradt against the order of the Court of First Instance of the European Communities (Fifth Chamber) of 11 February 2003 in Case T-83/02, Jan Pflugradt v European Central Bank

The appellant claims that the Court, at the same time as it sets aside the order appealed against, should:

1. Declare the action admissible;